



**iGuide: A Guide to Divorce Procedure
in England and Wales**



Obtaining a divorce is usually quite straight forward - particularly if you and your spouse agree that the marriage is over. Difficulties tend to occur more in agreeing the practical issues such as where to live, arrangements for the children and financial matters.

As you will be concentrating on those related issues, the procedure of actually getting the divorce may seem unnecessarily complicated. The purpose of this brief guide is to explain the process.

Who can start divorce proceedings?

Either spouse may start divorce proceedings, provided that they have been married for over a year and satisfy the jurisdictional criteria (connectedness) for the English courts to accept a divorce petition. You must satisfy one of the following criteria:

1. Both of you are habitually resident in England or Wales;
2. Both of you were last jointly habitually resident in England and one of you still resides here;
3. The Respondent to the divorce is habitually resident in England and Wales;
4. The Petitioner is habitually resident in England and Wales and has been residing here for the past 12 months;
5. The Petitioner is domiciled here and is habitually resident and been residing here for at least 6 months;
6. Both of you are domiciled in England and Wales;
7. Either of you are domiciled in England (this basis may not be available if any other EU state has jurisdiction and can cause difficulties with financial claims).

We can advise you further about the meaning of habitual residence and domicile and which is the best and most appropriate jurisdictional ground for you. Admissions of residence and domicile have important tax consequences which you should take into account and liaise with your accountant or other financial adviser.

If you do satisfy the jurisdictional criteria for a divorce in England and Wales, but that either of you have connections to another country, there may be opportunity to bring a divorce there to your benefit. This issue is of fundamental importance to consider at the very outset of a relationship breakdown. A divorce in another country may be more beneficial or detrimental to you, e.g. due to the likely financial provision on divorce. It is important to consider which country it is best for you and we will advise you in relation to this, and if necessary refer you to specialist family lawyers in other countries.

For more information please see the page on Forum on our website and the information contained there.

On what grounds can a divorce petition be started?

The only ground for divorce is that your marriage has irretrievably broken down, and that one of five facts are established. These facts are as follows:

1. That your husband or wife has committed adultery and that you find it intolerable to continue living together;
2. That your husband or wife has behaved in such a way that it would be unreasonable to expect the other to continue living together;
3. That your husband or wife has deserted you for a continuous period of two years or more;
4. You and your husband or wife have been living separately for two years or more and they agree to a divorce;
5. You and your spouse have been living separately for five years or more, whether or not your spouse consents to a divorce.

It is often a good idea and good practice to try and obtain your husband or wife's agreement to a divorce at the outset. We may be able to reach agreement with his or her solicitor over the form a petition should take and its



contents. However, in some circumstances, particularly where there are potentially more than one country with opportunity for a divorce then this is not advisable. We will advise you whether this is an issue in your case.

What happens when a divorce petition is issued?

We will prepare a divorce petition on your behalf and you will approve it before it is issued at court.

When lodging the divorce petition it is necessary to lodge your original marriage certificate, although in some circumstances it is possible to seek permission to file it at a later stage.

It is also necessary to file at court a form outlining the arrangements for any children. The law encourages parents to reach an agreement about the arrangements for their children, and will only make an order in relation to a child if it is considered in their best interests to do so. For more information please see the information concerning children on our website.

After the petition has been issued at the court we will arrange for it to be served on your husband or wife or their solicitors. The arrangements for service will depend on the circumstances of your case and we will advise you fully about this.

What happens once my husband or wife has been served with the petition?

After the petition is served, your husband or wife will have a specific number of days in which to acknowledge receipt of the divorce papers by the court. The number of days will depend on which country they are in when the proceedings are served on them.

If the Acknowledgement of Service is not returned within the required timescale it may be necessary to apply to the court for permission to proceed with the divorce in the absence of a response from your husband or wife.

Very few divorce petitions are defended, and we would advise you fully if this was an issue in your case.

On the basis that your spouse consents to a divorce, we would then apply to the court on your behalf for Decree Nisi, the first decree of divorce. To do this, your spouse as Respondent completes a short questionnaire known as an Acknowledgement of Service. We prepare a statement verifying the petition, which you approve and sign and we deliver to the court.

A Judge will then review the papers to ensure that all is in order and lists the case for Decree Nisi. It is not necessary to attend that hearing.

When will the divorce be finalised?

The Petitioner (the person that applied for the divorce) can apply for Decree Absolute 6 weeks and one day after Decree Nisi. The Respondent can apply 4½ months after the Decree Nisi. Decree Absolute is the final decree of divorce and once this is received you are no longer married, and free to remarry if you so wish.

In some exceptional circumstances it can be possible to obtain Decree Absolute in a shorter timescale.

Are financial matters dealt with before the divorce is finalised?

In practice final financial resolution has often not been reached by the time the Petitioner can apply for Decree Absolute.



In certain circumstances, it may be advantageous for the making of the Decree Absolute to be postponed until all the financial matters have been resolved. We will advise you further about this at the appropriate time.

What about religious divorces?

In conjunction with a civil divorce, some faiths seek a pronouncement by their religious authorities on their marriage. This may be in the form of a get, an annulment, a talaq or similar. In our experience, the timetable for obtaining these divorces within the civil divorce proceedings is often very important. If this is relevant, you must advise us in order for us to co-ordinate the civil divorce with other steps you may be taking for a religious divorce.

For more information about the divorce procedure in England and Wales, or other questions you may have, please contact a member of our specialist family law team. You can do so via our website, by email to enquiries@iflg.uk.com or telephone on +44 (0) 203 178 5668.

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